



to factors of her federal employment including heavy lifting, bending, stooping, walking, twisting, and driving a mail truck. She noted that she first became aware of her condition and realized its relationship to her federal employment on October 24, 2010. Appellant had stopped work on October 14, 2010. On January 6, 2011 OWCP accepted her claim for aggravation of degeneration of lumbar or lumbosacral intervertebral disc, aggravation of lumbar spondylosis with myelopathy, and aggravation of intervertebral disc disorder with myelopathy lumbar region. Appellant returned to light-duty work on February 11, 2011.<sup>2</sup>

On August 11, 2013 appellant filed a notice of recurrence (Form CA-2a) alleging that she stopped work on June 27, 2013 due to increased pain from her accepted October 14, 2010 employment injury. OWCP accepted this recurrence claim and authorized epidural spinal injections. On September 18, 2013 it paid appellant wage-loss compensation on the periodic rolls effective August 10, 2013. Appellant returned to light-duty work on October 1, 2013 as a modified city carrier.

On September 30, 2019 appellant underwent the third in a series of three OWCP-approved lumbar epidural spinal injections.

In a note dated October 2, 2019, appellant's attending physician, Dr. Thad S. Broussard, a Board-certified orthopedic surgeon, found that she was totally disabled from work due to lumbar spondylosis with radiculopathy and referred her to Dr. Kelly J. Scrantz, a Board-certified neurosurgeon.

On October 14, 2019 appellant filed a claim for wage-loss compensation (Form CA-7) claiming intermittent disability from September 28 through October 11, 2019. On the accompanying time analysis form (Form CA-7a) the employing establishment indicated that she sought medical treatment on September 30, 2019 and that she used eight hours of sick leave on October 3 and 4, 2019. Appellant continued to use leave without pay from October 5 through 25, 2019.

In an October 18, 2019 development letter, OWCP advised appellant that it had not received sufficient evidence to support her claim for wage-loss compensation. It informed her of the type of evidence needed to establish her wage-loss compensation claim and afforded her 30 days to submit the necessary evidence.

On November 5, 2019 Dr. Broussard completed a narrative report and diagnosed lumbar spondylosis with radiculopathy, low back pain, and knee pain. He found that appellant's lumbar epidural steroid injections were not helping her and referred her for examination with Dr. Scrantz, scheduled for November 18, 2019. Dr. Broussard concluded that appellant was totally disabled from work until Dr. Scrantz' examination. He indicated that she had difficulty standing, walking, bending, lifting, twisting, and stooping, and that those activities were aggravating factors to her continued back pain.

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<sup>2</sup> The record demonstrates that the employing establishment had no light-duty work available from October 14, 2010 through February 10, 2011.

On November 7, 2019 appellant filed another Form CA-2a recurrence claim. She alleged that she stopped work on October 3, 2019 due to her accepted October 24, 2010 employment injury.

In a November 14, 2019 development letter, OWCP provided appellant with the definition of a recurrence of disability and requested that she submit additional factual and medical evidence supporting that she was disabled from work for the period beginning October 3, 2019. It specifically requested that she submit a physician's opinion explaining how the claimed disability was due to the October 24, 2010 employment injury. OWCP afforded appellant 30 days to provide the requested evidence.

By decision dated November 19, 2019, OWCP denied appellant's claims for wage-loss compensation for total disability from work commencing October 5, 2019 and continuing. It found that the medical evidence of record was insufficient to establish that she had a return or increase of disability due to a change or worsening of her October 24, 2010 employment injury.

On November 18, 2019 appellant was examined by Kristen Dubols, a nurse practitioner.

By decision dated December 17, 2019, OWCP denied appellant's claim for a recurrence of disability commencing October 3, 2019. It found that the November 18, 2019 report was insufficient to establish her claimed recurrence of disability as it was signed by a nurse practitioner and not cosigned by a qualified physician such that it was medical evidence in accordance with FECA.

OWCP subsequently received additional evidence. In a December 2, 2019 note, Dr. Broussard requested a functional capacity evaluation (FCE) to determine appellant's work restrictions.

In reports dated December 18, 2019 and January 22, 2020, Dr. Scrantz diagnosed lumbar intervertebral disc degeneration, lumbar radiculopathy, and lumbar spinal stenosis. He reviewed appellant's magnetic resonance imaging (MRI) scan, finding worsening degenerative joint disease and facet degenerative joint disease at L4-5, and L5-S1. On physical examination Dr. Scrantz found right greater than left S1 radiculopathy, attributable to the L5-S1 space worsening stenosis. He found that appellant had reached maximum medical improvement without surgery. Dr. Scrantz also referred appellant for an FCE to determine her work abilities.

A December 17, 2019 FCE found that appellant could perform medium physical demand work as required by her light-duty position of customer service supervisor.

In a December 23, 2019 note, Dr. Broussard found that appellant could function at her current job within the confines of the FCE. He reported that appellant was experiencing pain in her legs due to spinal stenosis and that she might eventually require surgery.

On December 17, 2020 appellant requested reconsideration of the December 17, 2019 decision which denied her claim for a recurrence of disability commencing October 3, 2019.

By decision dated March 9, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.<sup>3</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>6</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>7</sup>

### ANALYSIS

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

The underlying issue on reconsideration is the medical question of whether appellant had sustained a recurrence of disability commencing October 3 due to her accepted employment injury.

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<sup>3</sup> 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>4</sup> 20 C.F.R. § 10.606(b)(3); *see P.M.*, Docket No. 20-0780 (issued November 24, 2020); *J.W.*, Docket No. 19-1795 (issued March 13, 2010); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>5</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>6</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

Along with the December 17, 2020 reconsideration request,<sup>8</sup> appellant provided notes dated November 18 and December 16, 2019 by Dr. Scrantz, finding worsening degenerative joint disease and facet degenerative joint disease at L4-5, and L5-S1 based on MRI scan findings. On physical examination he found right greater than left S1 radiculopathy, attributable to the L5-S1 space worsening stenosis. As these notes address the underlying issue of appellant's accepted medical conditions, the notes constitute relevant and pertinent new evidence that is not substantially similar to evidence previously considered. Therefore, the Board finds that the submission of this evidence requires reopening of appellant's claim for merit review pursuant to the third requirement of 20 C.F.R. § 10.606(b)(3).

Consequently, the Board will set aside OWCP's March 9, 2021 decision and remand the case for an appropriate merit decision on appellant's claim.

### **CONCLUSION**

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>8</sup> In computing a time period, the date of the event from which the designated period of time begins to run shall not be included, while the last day of the period so computed shall be included unless it is a Saturday, Sunday or a legal holiday. Appellant's December 17, 2020 request for reconsideration was received on the 365<sup>th</sup> day following the December 17, 2019 decision, and was therefore timely. *B.W.*, Docket No. 20-1512 (issued August 24, 2021). *Compare T.M.*, Docket No. 20-1306 (issued July 22, 2021) (finding that appellant has one calendar year to request reconsideration, *i.e.*, from September 5, 2018 to September 5, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 9, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 14, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board